SOUTHERN DISTRICT OF NEW YORK UNITED STATES DISTRICT COURT

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ANSWER Affirmative

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Index No: 08 CV 01542

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CONCORD NURSING AND REHABILITATION

CENTLER, INC.

Defendant

Concord Mursing and Rehabilitation Center, Inc. ("Concord" or "Defendant") by its attorney Jeffrey A. Russ PLLC answers the Complaint of Plaintiff 1199 SEIU United Healtheare Workers

Fast ("Plaintiff" or "Linion") and respectfully alleges as follows:

First: Denies so much of paragraph 6 as alleges that Concord is a party to or bound by a Collective Bargaining Agreement between the Union and the Greater New York Health Pacifities Association. Inc. ("Greater New York"). Concord is not a member of the Greater New York Health Pacifities Association. Inc. and the Memorandum of Agreement attached to the Complaint as Exhibit I does not bind Concord to a Collective Bargaining Agreement between the Union and Oreater New York but only a Memorandum of Agreement dated June 1, 2004 between such and Oreater New York but only a Memorandum of Agreement dated June 1, 2004 between such

Second: Since Concord is not a member of, or bound by, the provisions of the Circater New York Collective Bargaining Agreement Concord denies the allegations of paragraphs 7, 8, 9, 10, 11, 12 and 13 of the Complaint which alleged that Concord has obligations pursuant to a Collective Bargaining Agreement between the Union, and Greater New York.

Third: With regard to the allegations of paragraph 17 of the Complaint Concord by its attorney, Jeffrey A. Russ, participated in an arbitration held telephonically in approximately 30 minutes before Martin F. Scheinman, Esq., Impartial Chairman, ("Scheinman") on May 2, 2007. Linda Rodd represented the Union. Concord respectfully alleges as will be set forth at length in the Affirmative Defenses set forth below that the Arbitration Award dated December 12, 2007, ("Scheinman Award" or "Award") is not based on facts, is fatally flawed and should not be confirmed.

Fourth: Concord has not failed or refused to comply with the Scheimman Award as alleged in paragraph 19 of the Complaint but cannot comply because such Award is fatally flawed and should not be confirmed.

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Fifth: Annexed to this Answer as Exhibit 1 is a copy of the first three pages of a facsimile transmission from Anthony Petrella of the 1199 SERU Pension and Benefits Fund. ("Petrella Summary") to Linda Rodd, the attorney for the Union. Kate Tierney, Scoretary to Scheinman, and Jeffrey Russ, attorney for Concord. The facsimile transmissions states on the first page "Comments: Attached is a copy of the 8/01/02 – 12/31/05 audits needed for the 04/24/07 arbitration." This is the arbitration held by Scheinman, May 2, 2007. (Please see footnote 1 on page 2 of the Scheinman Award).

Sixth: The Petrella Summary shows that including interest to the date of the summary the total due from Concord to the six 1199 SEIU Funds namely the Welfare Fund, the Pension Fund, the

Education Fund, the Childeare Fund, the Job Security Fund. and the Worker Participation Fundwas \$221,143.55 (Please see page 2 of Exhibit I attached hereto).

Seventh: The audit summary report completed by the auditor for the 1199 SEIU Funds, page 3 of Exhibit 1, shows that the amount due to the six 1199 SEIU Funds without interest and auditor's fees was \$163,281,55.

Eighth: During the arbitration hearing Arbitrator Scheinman stated that he would issue, interest accrued on the amount due the Welfare Fund in the Award he would issue.

Minth: In his Arbitration Award Arbitrator Scheinman states that he arranged, apparently expande, for an updated "Statement of Position" from the Funds Office and that the balance due for the applicable period has been reduced by approximately \$62,000.00. (Please see footnote 2 page 3 of the Scheinman Award). At no time did Concord or its Counsel receive a copy of any updated Statement of Position.

Tenth: Despite the fact that the amount in controversy as submitted to Scheimman by the Union was a maximum of \$221.143.55 the amount awarded by Sheimman's Sward is silent as to how he arrived at the amount he awarded.

Eleventh: In the Petrolla Summary, the amount due 1199 SEIU Welfare Fund including interest and audit fees is alleged to be \$200,565.24. Scheimman awarded \$304,009.81. Scheimman's Award is silent as to how he arrived at the amount he awarded.

Twelfth: In the Petrella Summary, the amount due the 1199 SEIU Pension Fund including interest and audit fees is alleged to be \$6.560.60. Scheimman made no award to the Pension Fund. Fund. Scheimman's Award is silent as to why he made no award to the Pension Fund.

Thirtocouth: In the Petrella Summary, the amount due the 1199 SERU Education Fund \$5,665,74, interest is alleged to be \$5,546.68. Scheimman award the 1199 SERU Education Fund \$5,665,74, Scheimman's Award is silent as to how he arrived at the amount he awarded.

Fourteenth: In the Petrella Summary, the amount due the 1199 SEIR Job Security Pund including interest is alleged to be \$4.948.18. Scheimman awarded \$15.179.89. Scheimman's Award is silent as to how he arrived at the amount he awarded.

Fifteenth: In the Petrella Summary, the amount due the 1199 SERU Workers Participation Fundincluding interest is alleged to be \$740.02. Scheimman awarded \$755,90. Scheimman's Award is silent as to how he arrived at the amount he awarded.

SIXICCUID: NOWHERE IN THE SCHEINMAN AWARD IS THERE ANY ANALYSIS OF GOTTAND WERE REDUCED BY ABOUT \$62,000,000 AS SET FORTH IN HIS AWARD NOR IS THERE AWARDED AN AMOUNT MILE AMOUNTS IN THE CONTRAVERS NOR IS THERE ANY INCOMING AN AMOUNT MORE THAN \$100,000,000.000 ANY EXPLANATION OF HOW HE AWARDED AN AMOUNT MORE THAN \$100,000,000.000 ANY EXPLANATION OF HOW HE AWARDED AN AMOUNT MORE THERE.

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EXBLANATION OF WHY NO AWARD WAS MADE TO THE 1199 SEIU PEUSION FUND.

PAGE 3 OF ARBITRATOR SCHEINMAN'S AWARD NOR IS THERE ANY

Seventeenth: In view of the foregoing, Arbitrator Scheimman's Award is clearly defective, totally

flawed and should not be confirmed.

VS VAD FOR A SECOND AFFRAMATIVE DEFENSE.

Eighteenth: Attached as Exhibit 2(a) through 2(c) to this Answer are copies of the payments that Concord made to the various 1199 Funds during the period from April 16, 2007 to and including December 31, 2007.

Vineteenth: As shown in Exhibit 2(a), Concord made payments to the 1199 SERE Wellare Fund during the period from April 16, 2007. December 31, 2007 in the amount of \$469,379,70,

Pwentieth: As shown in Exhibit 2(b), Concord made payments to the 1199 SERP Pension Fund during the period from April 16, 2007 - December 31, 2007 in the amount of \$134,427,96

Twenty First: As shown in Exhibit 2(c), Concord made payments to the 1199 SERU Childeare Fund during the period from April 16, 2007 - December 31, 2007 in the amount of \$11,509,25.

Twenty Second: As shown in Exhibit 2(d), Concord made payments to the 1199 SEIU Workers Participation Fund during the period from April 16, 2007 - December 31, 2007 in the amount of

Twenty Third: As shown in Exhibit 2(e), Concord made payments to the 1199 SEIU Education and Training Fund during the period from April 16, 2007 December 31, 2007 in the amount of

Twenty Fourth: It does not appear from Scheinman's Award that Concord was given credit for any of the amounts it paid to the 1199 Funds despite the fact that Scheinman obtained, apparently, ex parte, an updated Statement of Position from the Fund's office (see footnote 2 on apparently, ex parte, an updated Statement of Position from the Fund's office (see footnote 2 on apparently, ex parte, an updated Statement of Position from the Fund's office (see footnote 2 on apparently, ex parte, an updated Statement of Position from the Fund's office (see footnote 2 on approximately

VS VAD FOR A THIRD AFFIRMATIVE DEFENSE.

Twenty Fifth: The arbitration hearing was held May 2, 2007. Scheimman issued his Award December 12, 2007. Scheimman set forth no explanation in his Award for the seven month

Twenty-Sixth: The Union submitted to Scheinman a claim for \$221.143.55 including interest and audit fees. Please see Exhibit I annexed hereto. Scheinman stated during the arbitration that he would forgive interest. Please see paragraph eighth above. Scheinman awarded the 1199 Funds

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\$328,266.35. There is no explanation of how he arrived at his Award. The only conclusion that can be drawn is that Scheimman's Award is faulty, totally flawed and in the interest of justice and

Twenty-Seventh: The failure of Scheimman to set forth, in any manner whatsoever, in his Award, how he arrived at the amounts allegedly due from Concord to the 1199 Funds is a fatal error and requires that this court in the interest of justice and equity refuse to confirm the Award,

WHEREFORE, Concord Mursing and Rehabilitation Center, Inc. respectfully requests:

That this court in the interest of justice and equity deny confirmation of the

December 12, 2007 Award of Martin F. Scheimnan, Esq.

2. That this court vacate such Award and direct that the parties submit the dispute to

arbitration before Murtin F. Seheimman, Esq., Impartial Chairman or another Arbitrator for a

hearing and issuance of a proper Award.

equity should not be confirmed by this Court.

3. That this Court grant such other and further legal and equitable relief as this Court

may deem just and proper together with reasonable attorney's fees, cost and disbursements of

This proceedings.

Dated: Jericho, New York April 13, 2008

Jeffrey A. Russ PLLC
Jeffrey A. Russ (JAR3806)
Attorney for Concord Mursing and
Rehabilitation Center. Inc.
33 South Service Road

Jericho, New York 11753

EXHIBIL 1

Home Health Aide Benefit Fund Home Care Employees Benefit and Pension Funds Greater New York Benefit and Pension Funds National Benefit and Pension Funds

[646] 473-6460 Phone • (646) 473-6475 Fax • www.] 199nbf org Finance Dept. • New York, NY 10036-6977 330 West 42nd Street • 27th Roor



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CONFIDENTIAL HEALTH INFORMATION ENCLOSED

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Comments: Attached is a copy of the 08/01/02-12/31/05 audits needed for the 04/24/07 arbitration.

CONFIDENTIAL COMMUNICATION

information is strictly prohibited. If you have received this message by error, please notify us immediately and destroy the related message. employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this privileged and confidential, the disclosure of which is governed by applicable law. If the reader of fals message is not the intended recipient, or the Important warning: This message is intended for the use of the person or entity to which it is addressed and may contain information that is

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Anthony Penella Controller
Finance Department

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Mr. Glen Richards

November 13, 2006

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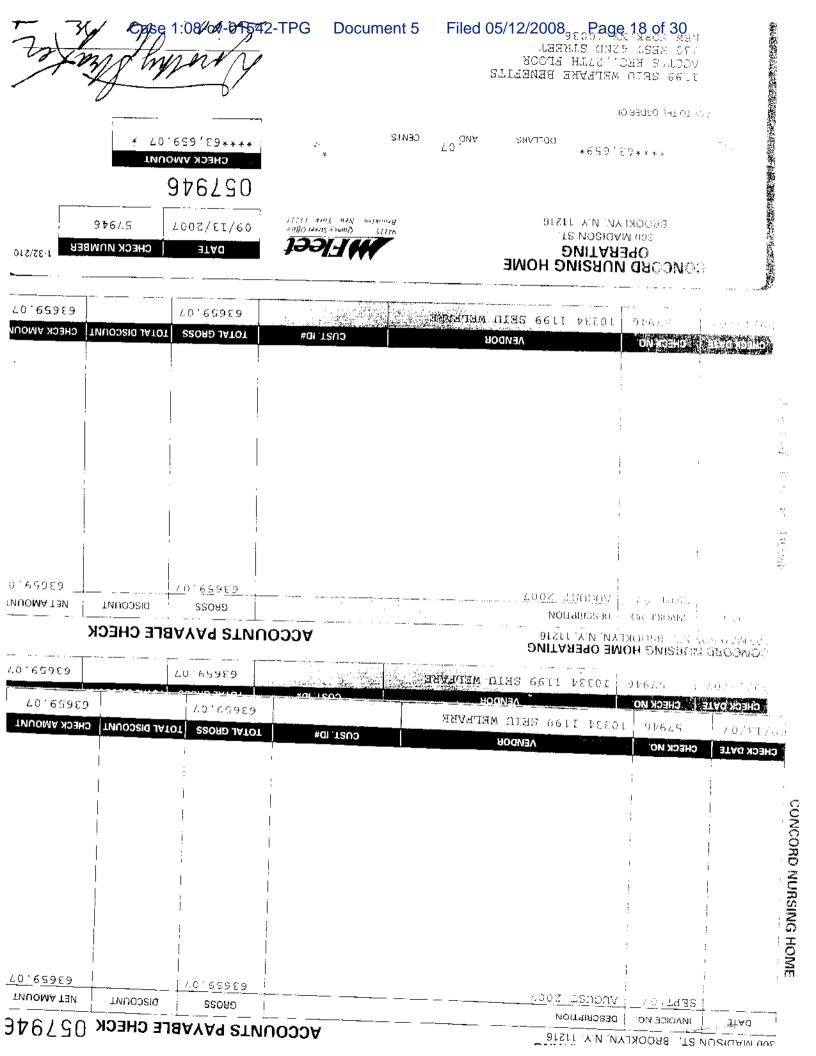
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CONCORD NURSING HOME OF BRATING 42-TPG Document 5-2 FiASICUSS/U12/2003414Page 2-04-34 UUI UTI **NET AMOUNT** DISCOUNT **GROSS** INVOICE NO. DESCRIPTION DATE 561.53 561.53 MAY 2007 | APR 2007 **CHECK AMOUNT** TOTAL DISCOUNT **TOTAL GROSS** CUST. ID# VENDOR CHECK NO. CHECK DATE 561.53 561.53 11166 1199 SEIU WORKER PAR 57341 \$5/L6/07 CONCORD NURSING HOME OPERATING 300 MADISON ST. BROOKLYN N.Y. 11216 **ACCOUNTS PAYABLE CHECK** INVOICE NO. DESCRIPTION $\mathcal{N}_{ij} = \mathcal{M}_{ij}$ GROSS DISCOUNT NET AMOUNT MAY 2007 APR 2007 501.53 561.53 **CHECK DATE** CHECK NO. VENDOR CUST. ID# TOTAL GROSS TOTAL DISCOUNT CHECK AMOUNT 05/16/07 11166 1199 SEIU WORKER PAR 561.53 561,53 CONCORD NURSING HOME 1-32/210 **CHECK NUMBER** DATE *y Fleet* **OPERATING** 300 MADISON ST. 05/16/2007 57341 Remakton, New York 1127: BROOKLYN, N.Y. 11216 057341 **CHECK AMOUNT** д**м**а 5-3 *****562* ******561.53 Pay DOLLARS CENTS 9AM TO THE ORDER OF 1199 SEIU WORKER PART, FUND ACCT'S REC., 27TH FLOOR 330 WEST 42ND STREET NEW YORK, NY.10036 AUTHORIZED SIGNATURES #057341# #021000322# 94175 38982#

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1139 SEIU PENSION BENEFITS ACCT'S REC.,27TH FLOOR 330 WEST 42ND STREET NEW YORK,NY.16036

PAY TO THE ORDER OF

Dorothy Stracker Sellie M-Bryant AUTHORIZED SIGNATURES

EXHIBIT 2(c)

AUTHORIZED & GNATURES

330 WEST 42ND STREET NEW YORK, NY. 10036

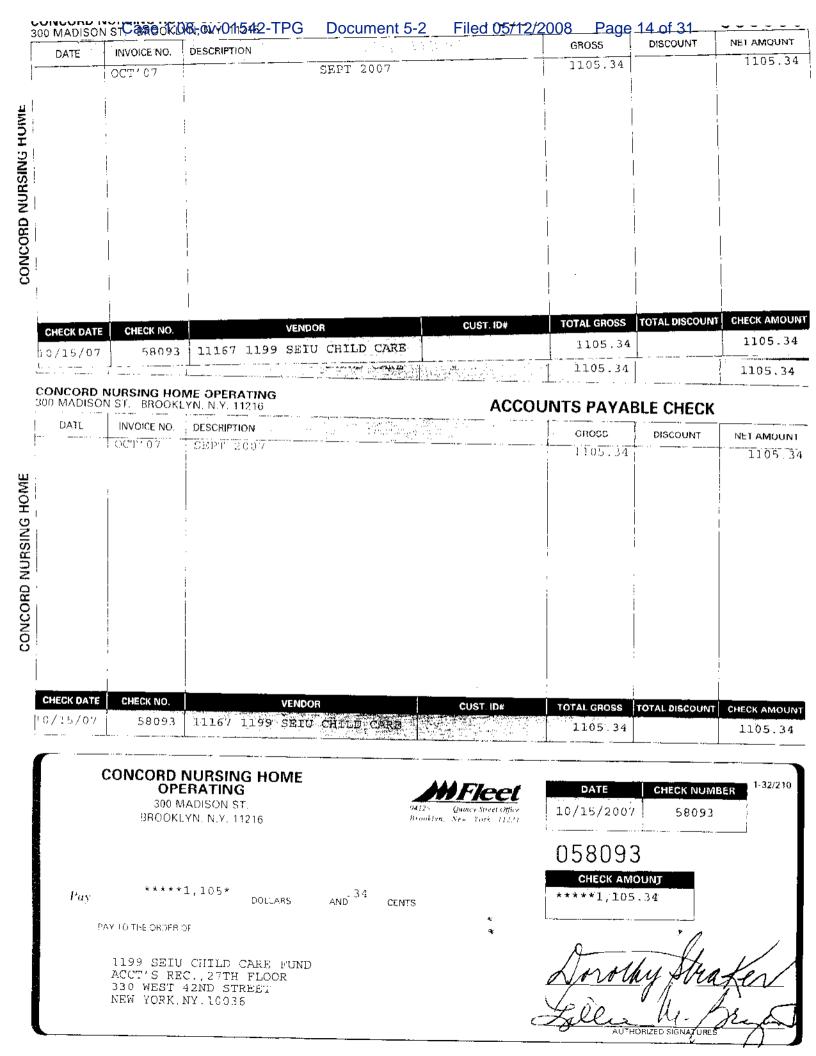
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1199 SEIU WORKER PART.FUND ACCT'S REC.,27TH FLOOR 330 WEST 42ND STREET NEW YORK,,NY.10036

AUTHORIZED SIGNATURES

Filed ACCO ONES PRYCHBLE CHECK 05830C 300 MADISON S Case O KO SYCN-01542-TPG Document 5-2 DATE INVOICE NO. DESCRIPTION GROSS DISCOUNT **NET AMOUNT** 767.02 OCT 07 BENEFITS 581.49 581.49 CONCORD NURSING HOME **CHECK DATE** CHECK NO. **VENDOR** CUST. ID# TOTAL GROSS TOTAL DISCOUNT **CHECK AMOUNT** 1/27/07 58300 11166 1199 SEIU WORKER 581.49 581.49 CONCORD NURSING HOME OPERATING 300 MADISON ST. BROOKLYN, N.Y. 11216 ACCOUNTS PAYABLE CHECK DATE INVOICE NO. | DESCRIPTION GROSS DISCOUNT NET AMOUNT NOVENT Toch on BEMIELLE 581.49 58T.49 CONCORD NURSING HOME CHECK DATE CHECK NO. **VENDOR TOTAL GROSS** TOTAL DISCOUNT **CHECK AMOUNT** 722762 11166 1199 SEID WORKER PAR 581.49 581.49 CONCORD NURSING HOME 1-32/210 OPERATING DATE CHECK NUMBER 300 MADISON ST 94725 Quincy Street Office Brooklyn, New York 17227 11/27/2007 58300 BROOKLYN, N.Y. 11216 058300 **CHECK AMOUNT** AND 4.9 ****581* PavDOLLARS CENTS PAY TO THE ORDER OF 1199 SELU WORKER PART.FUND ACCT'S REC. 27TH FLOOR 330 WEST 42ND STREET NEW YORK,,NY.10036 AUTHORIZED SIGNATURES

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PAY TO THE ORDER OF

1199 SEIU WORKER PART.FUND ACCT'S REC.,27TH FLOOR 330 WEST 42ND STREET NEW YORK,,NY.10036 Sollie G. Stepen

EXHIBIT 2(e)

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CONCORD NURSING HOME OPERATING

300 MADISON ST. BROOKLYN, N.Y. 11216

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*****1,546* BOLLARS AND 59 CENT

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1199 SEIU EDUCATION & TRAINING ACCT'S REC.,27TH FLOOR 330 WEST 42ND STREET NEW YORK,NY.10036 Drolly Straker School Significants PLEASE take notice that the within is a cortifold true copy of a duly onlered in the office of the clerk of the within named court on

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Plaintiff.

CONCORD NURSING AND REHABILITATION CENTER, INC.

Defendant.

ANSWER
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CASE NO. 08 CV 01542

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Defendant Turker (1986) (1986)

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: 1; one of the judges of the within named Court at

33 South Service Road Jericho, New York 11753 (516) 750-9713

Lowell Peterson

Action Meyer, Suozzi, English & Klein, P.C.

Plaintiff

ATTENDED 40 115

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